

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

GERMAN SALAS,
Plaintiff,

V.

UNITED PROPERTY & CASUALTY
INSURANCE COMPANY and
XAVIER MENDOZA JR.,
Defendants.

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CIVIL ACTION NO.: _____

**DEFENDANT UNITED PROPERTY AND CASUALTY INSURANCE COMPANY'S
NOTICE OF REMOVAL**

Defendant United Property and Casualty Insurance Company ("UPC") files this Notice of Removal:

I. Background

1. On August 18, 2017, Plaintiff German Salas ("Plaintiff") filed this lawsuit in Hidalgo County, Texas, against United Property & Casualty Insurance Company and Xavier Mendoza Jr.

2. Plaintiff served UPC with a copy of the Petition on August 23, 2017.

3. Plaintiff served Xavier Mendoza Jr. with a copy of the Petition on September 2, 2017. On September 11, 2017, Plaintiff filed a Nonsuit Against Defendant Xavier Mendoza Jr. On September 12, 2017, the Court granted Plaintiff's Nonsuit.

4. UPC files this notice of removal within 30 days of receiving Plaintiff's initial pleading. *See* 28 U.S.C. § 1446(b). In addition, this Notice of Removal is being filed within one year of the commencement of this action. *See id.*

5. As required by Local Rule 81 and 28 U.S.C. § 1446(a), simultaneously with the filing of this notice of removal, attached hereto as Exhibit "A" is an Index of Matters Being Filed.

A copy of the Case Summary Sheet is attached as Exhibit "B." A copy of the Civil Case Information Sheet is attached hereto as Exhibit "C." Plaintiff's Original Petition is attached as Exhibit "D." A copy of the Civil Process Request Form is attached hereto as Exhibit "E." A copy of the Citation issued to UPC is attached as Exhibit "F" and a copy of the Citation issued to Xavier Mendoza, Jr. is attached hereto as Exhibit "G." The Return of Service for UPC is attached as Exhibit "H" and the Return of Service for Xavier Mendoza, Jr. is attached as Exhibit "I." Plaintiff's Nonsuit Against Xavier Mendoza, Jr. is attached hereto as Exhibit "J" and the Court's Order granting Nonsuit is attached as Exhibit "K." The List of Counsel and Parties to the Case is attached as Exhibit "L," and a copy of the Declaration of Shannon Beck is attached as Exhibit "M." A copy of this Notice is also being filed with the state court and served upon the Plaintiff.

6. Venue is proper in this Court under 28 U.S.C. § 1441(a) because this district and division embrace Hidalgo County, Texas, the place where the removed action has been pending.

II. Basis for Removal

7. Removal is proper based on diversity of citizenship under 28 U.S.C. §§ 1332(a), 1441(a) and 1446. This is a civil action between citizens of different states, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

A. The Proper Parties Are Of Diverse Citizenship.

8. Plaintiff is, and was at the time the lawsuit was filed, a resident and citizen of Texas.

9. UPC was at the time this action was commenced, and still is, a foreign (Florida) property and casualty insurance company authorized to do business in the State of Texas. UPC is organized under Chapter 982 of the Texas Insurance Code.

10. Because Plaintiff is citizen of Texas and Defendant UPC is a citizen of Florida, complete diversity of citizenship exists among the parties.

B. The Amount in Controversy Exceeds \$75,000.00.

11. This is a civil action in which the amount in controversy exceeds \$75,000.00. Plaintiff's Petition alleges that "Plaintiff's counsel states that Plaintiff is seeking monetary relief of less than \$100,000." *See* Exhibit D § 6. Plaintiff's counsel is leaving the door open to amend the petition to seek additional monetary relief.

12. Further, Plaintiff alleges that Defendant is liable under a residential insurance policy because Plaintiff made a claim under that policy and Defendant wrongfully adjusted and denied Plaintiff's claim. Specifically, Plaintiff alleges that Defendant UPC breached insurance policy number UTH 0108365 02 42, with a Dwelling Limit of \$131,000.00, an Other Structures Limit of \$2,620.00, a Personal Property Limit of \$52,400.00, and a Loss of Use Limit of \$39,300.00, for the property located at 1827 Butkus Dr., Edinburg, Texas 78542 (the property giving rise to the present dispute). *See* Exhibit "M," Beck Declaration, attached hereto and fully incorporated herein by reference. In determining the amount in controversy, the Court may consider "policy limits . . . penalties, statutory damages, and punitive damages." *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

13. In addition to the amounts sought in this litigation by Plaintiff through the policy, Plaintiff's Original Petition alleges that Defendant is liable under various statutory and common law causes of action for consequential damages, statutory penalties, treble damages, exemplary damages, court costs, and attorney's fees. As such, Plaintiff's alleged damages greatly exceed \$75,000.00.

III. Conclusion and Prayer

14. Accordingly, all requirements are met for removal under 28 U.S.C. §§ 1332 and 1441. UPC hereby removes this case to this Court for trial and determination.

Respectfully submitted,

/s/ Rhonda J. Thompson

RHONDA J. THOMPSON, ATTORNEY-IN-CHARGE

rthompson@thompsoncoe.com

State Bar No. 24029862

Southern District No.: 17055

SHANNON BECK

sbeck@thompsoncoe.com

State Bar No. 24092102

Southern District No.: 2715159

THOMPSON, COE, COUSINS & IRONS, LLP.

700 N. Pearl Street, 25th Floor

Dallas, Texas 75201

Telephone: (214) 871-8200

Facsimile: (214) 871-8209

**COUNSEL FOR DEFENDANT
UNITED PROPERTY & CASUALTY
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

This is to certify that on the 22nd day of September, 2017, a true and correct copy of the foregoing was delivered to the following counsel of record by electronic service and/or facsimile transmission and/or certified mail, return receipt requested:

Matthew Zarghouni
Zar Law Firm
7322 Southwest Fwy., Suite 1965
Houston, Texas 77074
Fax: (832) 448-9149
matt@zar-law.com
Counsel for Plaintiff

/s/ Rhonda J. Thompson

Rhonda J. Thompson